

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission) Docket No. ER11-1844-000
System Operator Inc.)

MOTION TO INTERVENE AND PROTEST

NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, and the Commission’s notice issued on October 21, 2010 in the above-captioned proceeding, the New England States Committee on Electricity (“NESCOE”) moves to intervene and protest the rate filing made by the Midwest Independent Transmission System Operator, Inc. (“MISO”) and the International Transmission Company d/b/a ITC *Transmission* (“ITC”) (collectively “Unilateral Filing Parties”) on October 20, 2010, in the above-captioned proceeding (“Unilateral Cost Allocation Filing”).¹ As discussed below, NESCOE’s interest in this proceeding relates to the precedent that would be established if the Unilateral Cost Allocation Filing is approved, which precedent could adversely affect New England consumers.

The Commission should reject the Unilateral Cost Allocation Filing because it has no basis in a Commission approved tariff or policy and is not supported by any contract or agreement between ITC and the parties it seeks to charge. The Unilateral Cost Allocation Filing is, instead, an after-the-fact effort to impose costs of facilities located in one region on non-customers in other regions who did not plan or construct the facilities and who have not agreed

¹ The Connecticut Department of Public Utility Control intervened in this proceeding on November 10, 2010 and authorizes NESCOE to represent that it joins this protest.

to pay for them. The Unilateral Cost Allocation Filing does not rely on relevant precedent to support the requested allocation. Further, the Unilateral Cost Allocation Filing is at odds with the Commission's proposed rule on interregional cost allocation policy now pending in Docket No. RM10-23-000. Accordingly, the Commission should reject the Unilateral Cost Allocation Filing.

I. Background

On October 20, 2010, the Filing Parties submitted proposed revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff. The Unilateral Filing Parties proposed a methodology to allocate and recover the costs of the ITC Phase Angle Regulating Transformers at Bunce Creek on the Michigan-Ontario border ("PARs") among the MISO, the New York Independent System Operator, Inc. ("NYISO"), and PJM Interconnection, L.L.C ("PJM"). The Filing Parties exclude the Ontario Independent Electricity System Operator ("IESO") region from its proposed cost allocation. Without a supporting agreement or customer relationship, the Filing Parties propose to allocate the costs of the PARs as follows: MISO - 49.6%, PJM - 19.5%, and NYISO - 30.9%. PJM and NYISO did not join the Unilateral Cost Allocation Filing.

II. Protest

First, there is no Commission policy that allows the Unilateral Filing Parties to request after-the-fact payment from non-customers in another region. The Unilateral Filing Parties do not cite to a Commission decision that supports their unilateral cost allocation proposal. The cases the Unilateral Filing Parties cite are factually distinct: they do not involve allocating costs for a facility located in one transmission planning region to non-customers in another transmission planning region.

Second, the Commission is currently considering comments concerning proposed policy on interregional cost allocation in the Transmission NOPR.² The Commission should not prejudge the outcome of the NOPR in the context of the Unilateral Cost Allocation Filing, particularly when it is in direct conflict with some fundamental policy premises identified in the NOPR.

Specifically, in the Transmission NOPR, the Commission proposes to require that “public utility transmission providers located in each pair of *neighboring transmission planning regions* develop a *mutually agreeable* method for allocating between the two transmission planning regions the costs of a *new* transmission facility that is located *within both regions and that is eligible for interregional cost recovery pursuant to the region’s interregional transmission planning agreement developed in accordance with the requirement proposed above.*”³ Under the Transmission NOPR, “*costs cannot be assigned involuntarily under this rule to a transmission planning region in which that facility is not located.*”⁴ In Comments on the NOPR, NESCOE stated it appreciated that particular fundamental NOPR principle, which the Unilateral Cost Allocation Filing contradicts.⁵

Third, NESCOE is concerned that a favorable ruling on the Unilateral Cost Allocation Filing would appear to establish that such an allocation may be made through a Section 205 filing. Such an outcome would appear to give any entity in one transmission planning region Section 205 rights to assign costs to any other entity in another transmission planning region that may be argued to derive some benefit from a transmission project. As NESCOE stated in Comments on the Transmission NOPR, “... any final provision on interregional cost/benefit

² Transmission NOPR at P. 188.

³ Transmission NOPR at P 172. (Emphasis added.)

⁴ *Id.* at P 174. (Emphasis added.)

⁵ NESCOE Comments on Transmission NOPR dated September 29, 2010 at pages 2, 20 and 21.

analysis must recognize that even if a transmission project can show benefits to multiple regions it does not mean that the project is the most cost-effective or environmentally preferred way to achieve those benefits.”⁶ If interregional cost allocation were permitted through a unilateral 205 path, it is reasonable to expect serious contention over one region’s assertions of benefits and other region’s interest in ensuring consumers derive the benefits claimed and do so in the most cost-effective possible way. The Transmission NOPR’s proposal for mutually agreeable frameworks in the context of interregional agreements is a far more expeditious path to planning and allocation progress than would be a steady stream of contested proceedings over benefits, alleged benefits and levels of alleged benefits following unilateral filings.

Finally, the risk of involuntary interregional cost allocation, especially where there is no transmission provider/customer relationship, could dampen interregional planning and the important interregional cooperation the Commission seeks to advance through the NOPR. As NESCOE stated in its NOPR Comments “New England supports the NOPR’s interregional coordination proposal provided that interregional projects will be identified and developed through the current approach that has as its basis each regions’ transmission plan and that interregional transmission projects sponsored by one region will not be imposed involuntarily on another region.”⁷ A favorable ruling on the Unilateral Cost Allocation Filing could hinder the interregional planning the NOPR seeks to encourage and NESCOE supports by creating real concern that any joint project discussed among regions could become the subject of an involuntary cost allocation through a unilateral Section 205 filing.

Any agreement on interregional cost allocation must be based on either mutual agreement or a generally applicable Commission policy applied on a going forward basis, which policy

⁶ *Id.* at page 22.

⁷ *Id.* at pages 19 - 20.

should reflect the NOPR principle of voluntary agreement. The Unilateral Filing Parties' request in this proceeding that would unilaterally allocate costs on other regions' consumers retroactively is at odds with the Commission's proposed policy. Therefore, the Commission should reject the Unilateral Cost Allocation Filing.

III. Intervention

NESCOE is the Regional State Committee for the New England region. NESCOE is governed by a board of managers appointed by the Governors of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont and is funded through a regional tariff administered by the ISO New England.⁸ NESCOE's purpose is to represent the interests of the New England region by advancing policies that will provide electricity at the lowest possible price over the long term, consistent with maintaining reliable service and environmental quality. NESCOE has an interest in the outcome of this proceeding because it could set precedent that would affect costs allocated to New England consumers for facilities located outside of New England. In particular, if the request is approved, it could allow the assessment the costs of facilities located outside New England to New England consumers despite the lack of a transmission provider/customer relationship and despite the lack of any interregional agreement concerning such allocation. No other party can adequately represent NESCOE's interest. Therefore, NESCOE requests permission to intervene. It is in the public interest to permit this intervention.

IV. Communications

The names, titles and offices to whom correspondence in regard to this proceeding should be addressed is as follows:

Heather Hunt

⁸ ISO New England, Inc., 121 FERC ¶ 61,105 (2007).

Executive Director
New England States Committee on Electricity
242 Whippoorwill Lane
Stratford, Connecticut 06614
Tel: 203-380-1477
HeatherHunt@nescoe.com

V. Conclusion

For the reasons set forth above, NESCOE requests that it be permitted to intervene in this proceeding and urges the Commission to reject the Unilateral Cost Allocation Filing.

Respectfully Submitted,

/s/ Heather Hunt
Heather Hunt

Executive Director
New England States Committee on Electricity
242 Whippoorwill Lane
Stratford, Connecticut 06614
Tel: 203-380-1477
HeatherHunt@nescoe.com

Dated: November 17, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each party on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated: November 17, 2010

/s/ Heather Hunt

Heather Hunt

Executive Director
New England States Committee on Electricity
242 Whippoorwill Lane
Stratford, Connecticut 06614
Tel: 203-380-1477
HeatherHunt@nescoe.com